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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
MobileTel, Inc.) File No. _____
)
Petition for Partial Waiver of the)
Universal Service Contribution) CC Docket No. 96-45
Requirements Contained in Sections 54.703,)
54.709, and 54.711 of the Commission's Rules)

To: Common Carrier Bureau
Universal Service Branch

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION FOR PARTIAL WAIVER

MobileTel, Inc. ("MobileTel"), by its attorneys and pursuant to section 1.3 of the Commission's rules, hereby petitions for a partial waiver of sections 54.703, 54.709, and 54.711 of the Commission's rules, 47 C.F.R. §§ 54.703, 54.709, and 54.711 (1997),^{1/} to permit MobileTel to exclude the revenues attributable to its provision of cellular service in the Louisiana 8 and 9 rural service areas ("RSAs") in 1997 and 1998 from its 1998 and 1999 universal service calculations, respectively.

MobileTel's 1997 cellular revenues included revenue from service provided in the RSAs; a portion of its 1998 revenues will likewise reflect the provision of service there. In December 1997, however, the Commission awarded the Block B cellular licenses for those markets to Bell South Mobility, Inc. and the Louisiana RSA No. 8 Limited Partnership ("Louisiana-8").

^{1/} These provisions require any carrier that provides interstate telecommunications service, including cellular service, to contribute to the universal service programs on the basis of its end-user telecommunications revenues as calculated using the carrier's prior year revenue.

Louisiana-8 and Bell South Mobility began service in RSAs 8 and 9 in March 1998. MobileTel continues to provide cellular service in the Houma-Thibodaux MSA.

A waiver of the contribution requirements to permit MobileTel to exclude its RSA revenues from its 1998 and 1999 universal service calculations would serve the public interest. First, MobileTel's loss of its subscribers in the RSAs is solely the result of the Commission's decision to reverse a six-year-old Common Carrier Bureau order granting the RSA licenses to MobileTel. Second, requiring MobileTel to include 1997 and 1998 revenues attributable to the RSAs in its universal service calculations for 1998 and 1999 would disproportionately burden its Houma-Thibodaux customers with a contribution obligation more appropriately allocated to customers MobileTel no longer serves. A waiver would relieve MobileTel's remaining subscribers of a disproportionate universal service burden, which would be unfair to those subscribers and would place MobileTel at a competitive disadvantage. Third, the amount at issue – approximately \$77,000 in 1997 revenues and about one-quarter of that amount for 1998 – is insignificant to the universal service funds. Given the unique circumstances, a waiver even with respect to this small amount would be a one-time event without any precedential value.

In light of the foregoing, MobileTel respectfully requests a partial waiver of sections 54.703, 54.709, and 54.711 of the Commission's rules as described more fully herein.

DISCUSSION

Under section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the Commission may waive any provision of its rules or orders upon a showing of good cause. A petitioner must demonstrate that special circumstances, on an individual basis, warrant deviation from the rules

and that a waiver would serve the public interest better than application of the general rule.^{2/}

MobileTel's situation clearly satisfies these requirements.

On August 14, 1996, the Commission rescinded MobileTel's licenses for the Louisiana 8 and 9 RSAs.^{3/} MobileTel had been awarded the licenses in 1990 and had been providing service in the RSAs since 1992. The Commission found that, at the time MobileTel filed its applications for the RSA licenses, it was not a wireline common carrier eligible for the Block B frequencies in the RSAs under former section 22.902(b) of the Commission's Rules.^{4/} In so holding, the Commission overruled an earlier order of the Mobile Services Division.^{5/} MobileTel was granted interim authority to continue operating until qualified applicants were licensed and ready to begin service.^{6/} These licenses were subsequently granted to Louisiana-8 and BellSouth Mobility,^{7/} and in March 1998 these entities commenced service in their respective RSAs.^{8/}

^{2/} Northwest Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

^{3/} Applications of MobileTel, Inc., Memorandum Opinion and Order, File Nos. 10538-CL-P-461-B-89 and 10539-CL-P-462-B-89 (rel. Aug. 14, 1996) ("August 14 Order"); aff'd, 107 F.3d 888 (D.C. Cir. 1997); cert. denied, 66 U.S.L.W. 3129 (U.S. Nov. 3, 1997) (No. 97-189).

^{4/} Id. at ¶ 27.

^{5/} In October 1990, the Mobile Services Division held that MobileTel was eligible for the Block B frequencies in the RSAs because its affiliate, Lafourche Telephone Company, provided basic telephone service there using Basic Exchange Radio Telephone Service. In Re Applications of MobileTel, Inc., Memorandum Opinion and Order, 5 FCC Rcd 5854, 5856 (MSD 1990). The Mobile Services Division awarded the RSA licenses to MobileTel. Id.

^{6/} August 14 Order at ¶¶ 28, 35.

^{7/} In re Applications of Louisiana RSA No. 8 Limited Partnership For Authorization in the Domestic Cellular Radio Telecommunications Service on Frequency Block B in Market 461, Louisiana 8 - St. James RSA; BellSouth Mobility, Inc. For Authorization in the Domestic Cellular Radio Telecommunications Service on Frequency Block B in Market 462, Louisiana 9 - Plaquemines RSA; File Nos. 00401-CL-P-97, 00140-CL-P-462-B-97; Order, DA 97-2495 (rel. December 2, 1997).

Under section 54.703, any carrier that provides interstate telecommunications service must contribute to the universal service program for schools, libraries, and health care providers on the basis of its interstate, intrastate, and international end-user telecommunications revenues. The carrier must also contribute to the universal service program for high cost, rural and insular areas, and low income customers on the basis of its interstate and international end-user telecommunications revenues. 47 C.F.R. §§ 54.703, 54.709 (1997). Contributions are calculated and filed in accordance with the Universal Service Worksheet, which each contributor must submit to the Commission on a semi-annual basis. 47 C.F.R. § 54.709 (1997). Using data collected in the Universal Service Worksheets, each carrier's contribution is based on its previous year's revenue.

As an affiliate of a small rural telephone company, MobileTel is committed to the principle of universal service and does not seek a waiver of the contribution requirement in its entirety. However, MobileTel's 1997 and 1998 revenue from its provision of cellular service includes or will include revenue from customers located in the Louisiana 8 and 9 RSAs to whom it no longer provides service. Based upon these revenues, MobileTel's total universal service contribution for 1998 is \$257,847, of which \$77,193 is attributable to revenue from former customers located in the RSAs. MobileTel estimates that about \$20,000 of its 1999 contribution would likewise be attributable to service in the RSAs.

(continued from previous page)

^{8/} See Louisiana RSA No. 8 Limited Partnership Initial FCC Form 489, File No. 00141-CL-P-461-B-97, filed March 9, 1998 (service commenced in LA-8 RSA on March 7, 1998); BellSouth Mobility, Inc. Initial FCC Form 489, File No. 00140-CL-P-462-B-97, filed April 2, 1997 (service commenced in LA-9 RSA on March 29, 1998).

Without a waiver, MobileTel will be required to recover the total amount of its contribution from its remaining subscribers. In 1998, these subscribers will be forced to pay approximately 43 percent more toward universal service than they would pay otherwise. Likewise, MobileTel's 1999 contribution obligation will be inflated by revenues attributable to its service in RSA 8 from January 1 through March 6, 1998 and in RSA 9 from January 1 through March 28.

Such a result is clearly unfair to MobileTel's subscribers. Moreover, this result will place MobileTel at a competitive disadvantage because it will be forced either to absorb these additional universal service costs or pass them through to customers and risk losing business to cellular and PCS competitors whose per subscriber universal service burden will be less than MobileTel's because their respective customer bases have held steady or grown since 1997. The disproportionate burden on MobileTel is solely the result of the Commission's determination to rescind MobileTel's RSA licenses, reversing a six-year-old Common Carrier Bureau decision finding MobileTel eligible for the licenses. While the \$77,193 at stake in 1998 and the proportionately smaller amount that MobileTel would owe in respect of the RSAs in 1999 will have an immaterial effect on funding for the universal service programs, it will significantly impact MobileTel and its subscribers.

Because a smaller proportion of MobileTel's 1998 revenues and none of its 1999 revenues will be attributable to providing service to customers in the RSAs, this situation will correct itself in the future. Given the unique circumstances set forth above, a one-time waiver of the Commission's rules to permit MobileTel to exclude from its 1998 and 1999 universal service contribution bases those revenues derived from serving customers in the RSAs is clearly warranted.

CONCLUSION

For the foregoing reasons, the Commission should grant MobileTel's petition for a partial waiver of the universal service rules to permit MobileTel to exclude its RSA revenues from its 1998 and 1999 universal service calculations.

Respectfully submitted,

MOBILETEL, INC.

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May 26, 1998

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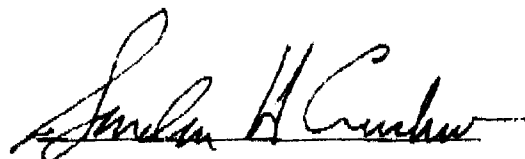
DECLARATION OF SINCLAIR H. CRENSHAW

I, Sinclair H. Crenshaw, do hereby declare as follows:

1. I am Vice President of MobileTel, Inc. ("MobileTel"). I am submitting this Declaration in support of MobileTel's Petition for Partial Waiver of the Universal Service Contribution Requirements ("Petition").

2. I have reviewed MobileTel's Petition hereby certify under penalty of perjury that the facts contained therein, other than those of which official notice may be taken, are true and correct to the best of my knowledge, information and belief.

Executed on this 26th day of May, 1998.

A handwritten signature in dark ink, appearing to read "Sinclair H. Crenshaw", with a horizontal line drawn beneath the signature.

Sinclair H. Crenshaw

CERTIFICATE OF SERVICE

I, Michelle Mundt, hereby certify that on this 26th day of May 1998, I caused copies of the foregoing "Petition of MobileTel, Inc." to be sent to the following by hand delivery:

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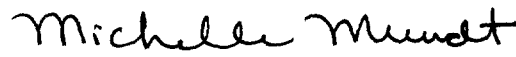
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